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12/4/07

In re Application of: :
Bogl, Stefan :
Serial No. 10/517,711 :
Filed: Dec. 10, 2004 :
Docket: CBZ-1266 :
Title: :
METHOD AND DEVICE FOR THE :
PRODUCTION OF A PRECISE :
CONCRETE PREFABRICATED PART :

DECISION ON PETITION
UNDER 37 CFR § 1.181

This is a decision on the petition filed Sep. 4, 2007 under 37 CFR 1.181 requesting entry of the Reply Brief filed on Mar. 15, 2007. The petition is being considered pursuant to 37 CFR § 1.181, and no fee is required.

The petition is granted.

The record shows on Mar. 15, 2007, the appellant filed a reply brief to the examiner's answer of Jan. 16, 2007. In the reply brief, the appellant made further arguments regarding the examiner's improper interpretation of "add on elements" in the German patent, DE 19753705. The appellant also argues that it is not permissible to interpret a Section 102 reference outside of its express or inherent disclosure. It is not permissible to interpret a Section 102 reference so as to contradict its express disclosure, as the present Final Action has done. The appellant also presents further arguments regarding claims 21, 22, 24, 28 and 30.

On Jul. 2, 2007, the examiner issued an Office action to notify the appellant refusal to enter the reply brief of Mar. 15, 2007 because the reply brief is not in compliance with 37 CFR 41.41(a)¹. In particular, the examiner asserts the reply brief is not limited to new points of argument or to new grounds of rejection raised in the examiner's answer.

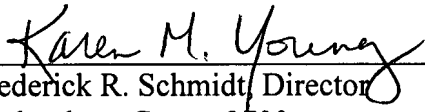
¹ 37 CFR §41.41 Reply brief. (a) (1) Appellant may file a reply brief to an examiner's answer within two months from the date of the examiner's answer. (2) A reply brief shall not include any new or non-admitted amendment, or any new or non-admitted affidavit or other evidence. See § 1.116 of this title for amendments, affidavits or other evidence filed after final action but before or on the same date of filing an appeal and § 41.33 for amendments, affidavits or other evidence filed after the date of filing the appeal. (b) A reply brief that is not in compliance with paragraph (a) of this section will not be considered. Appellant will be notified if a reply brief is not in compliance with paragraph (a) of this section. (c) Extensions of time under § 1.136 (a) of this title for patent applications are not applicable to the time period set forth in this section. See § 1.136 (b) of this title for extensions of time to reply for patent applications and § 1.550 (c) of this title for extensions of time to reply for ex parte reexamination proceedings.

In particular, the examiner asserts the reply brief is not limited to new points of argument or to new grounds of rejection raised in the examiner's answer.

According to 37 CFR §41.41, there is no prohibition against the appellant's additional arguments relating to the interpretation of a prior art reference against the claims under appeal such as in the reply brief of Mar. 15, 2007. In finding petitioner's points of argument persuasive, the requested relief is granted. The Office action mailed on Jul. 2, 2007 is hereby withdrawn. The examiner has been directed to enter and consider the reply brief of Mar. 15, 2007 in accordance with 37 CFR § 41.43.

The application is being forwarded to Examiner McDonald of Art Unit 3723 for entry and consideration of reply brief filed on Mar. 15, 2007. Any inquiry regarding this decision should be directed to Henry C. Yuen, Special Programs Examiner at (571) 272-4856.

PETITION GRANTED.

for 

Frederick R. Schmidt, Director
Technology Center 3700